

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

THOMAS E. KENNEDY,

Petitioner,

v.

DARREN SWENSEN,

Respondent.

Case No. C06-5546FDB

ORDER DENYING  
PETITIONER'S MOTION FOR  
APPOINTMENT OF COUNSEL

The court has reviewed petitioner's motion for appointment of counsel and the balance of the record. It is therefore ORDERED.

(1) There is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254, unless an evidentiary hearing is required or such appointment is “necessary for the effective utilization of discovery procedures.” See McCleskey v. Zant, 499 U.S. 467, 495 (1991); United States v. Duarte-Higareda, 68 F.3d 369, 370 (9<sup>th</sup> Cir. 1995); United States v. Angelone, 894 F.2d 1129, 1130 (9<sup>th</sup> Cir. 1990); Weygandt v. Look, 718 F.2d 952, 954 (9<sup>th</sup> Cir. 1983); Rules Governing Section 2254 Cases in the United States District Courts 6(a) and 8(c). The court also may appoint counsel “at any stage of the case if the interests of justice so require.” Weygandt, 718 F.2d at 754. In deciding whether to counsel, however, the court “must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.” Id.

(2) Petitioner has not requested he be allowed to conduct discovery in this matter, nor does the undersigned find good cause for granting him leave to do so at this stage of the proceedings. See Rule Governing Section 2254 Cases in the United States District Courts 6(a). In addition, as the court has not

1 determined whether an evidentiary hearing will be required in this case. See Rule Governing Section 2254  
2 Cases in the United States District Courts 8(c).

3 After reviewing the record, this court finds an evidentiary hearing is not necessary. Petitioner's  
4 motion for appointment of counsel is therefore **DENIED**.

5 DATED this 16<sup>th</sup> day of November, 2006.

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7 /s/ J. Kelley Arnold  
J. Kelley Arnold  
8 United States Magistrate Judge  
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